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The Solicitors' Journal

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Current Topics.

Corfu: Some Memories.

THE visit last week of KING EDWARD to Corfu revived memories of the time when the group of islands to which it belongs was, by the Congress of Vienna, placed under the protection of Great Britain. During that period we were represented by a succession of Lord High Commissioners, one of whom was no less a person than Mr. GLADSTONE, who was asked to fill the post temporarily by reason of his interest in the political situation in the islands, and also by reason of his love of Homer, and his geography. It was Mr. GLADSTONE'S function to endeavour to reconcile the islanders to a continuance of the connection with this country, but finding this to be hopeless he eventually recognised that the only solution of the problem was the union with Greece so ardently clamoured for, a union which was consummated in the year 1863. Not only, however, was this country represented by the Lord High Commissioners, but by judges, and it is of interest to recall that one of those was the father of Lord Chancellor LOREBURN, whose appointment to the post came about in a somewhat curious fashion. The father, who became Sir JAMES J. REID, was a member of the Scots Bar, and a strong supporter of the first Reform Bill; he was also the secretary of the Reform Association in Scotland, a body which included some hot-headed members who, not content to rely on moral suasion, advocated the use of force in their propagandist efforts, and actually had a number of handbills printed counselling the adoption of this means of attaining their ends. REID vehemently opposed such tactics, but being outvoted he said, "Give me these bills, they concern me," and having got them he threw them into the fire and stood in front of it till they were all consumed. News of this courageous act reached headquarters and eventually led to REID being offered the Chief Justiceship of the Ionian Islands, an offer which was accepted; and for twenty years he remained at Corfu, occupying his leisure in preparing a code of the local laws.

Road Accident Statistics.

THE report on fatal road accidents in 1935, which was issued towards the end of last week (H.M. Stationery Office, price 2s. net), contains informative statistics bearing on the problem of road safety. Though the figures when compared with those for 1933—the last year for which such an analysis was prepared—show some improvement, it cannot be said that the report is an encouraging document, though it will doubtless form an invaluable source of information as a basis for new safety measures. The report, which records a total of 6,477 persons killed, compared with 7,134 in 1933, exhibits with a decrease in the percentage of fatalities among pedestrians (47·5 against 49·3) and motor-cyclists (16·3 against 18·3) an increase in the case of pedal-cyclists, which number 21·3 per cent. of those killed, compared with 18·6 for 1933. Little change is recorded in the proportion of other classes of road users killed to the total, though there is a slight increase in the case of passengers (other than pillion riders) and drivers of motor vehicles. Expressed as a percentage of the respective total number of vehicles involved, the most notable increase is in the case of pedal cycles (20 compared with 16·9) followed by motor vans, lorries, etc. (21·8 compared with 20·2), while decreases are recorded in the cases of private motor vehicles, public conveyances, and motor cycles, percentages for which are respectively for 1935: 28·8, 9·5 and 17·1; for 1933: 29·1, 10·8 and 20·4. It should be noted that these figures are based on totals of 8,730 and 9,612 for 1935 and 1933, so that a percentage increase heightens the comparison. Thus, despite the increase above mentioned in regard to vans and lorries, the total has decreased from 1,939 to 1,903, while in the case of motor cycles there has been a substantial drop of 462 to 1,497. It is interesting to observe that in nearly 10 per cent. of the accidents no mechanical vehicle was involved at all. Saturday appears to be the most dangerous day of the week, with an average of 25 fatal accidents; Friday comes next with 18·4. Rather surprisingly, Sunday is the safest day, with an average of 13·9. From Monday to Friday the most dangerous hour is that between 5 and 6 p.m.; on Saturdays and Sundays it is between 10 and 11 p.m., which is the second most dangerous hour on the other days of the week. The most dangerous age for drivers seems to be between 21 and 30; for pedestrians the death curve descends rapidly after the age of 11 until it reaches its lowest point between 20 and 25, and then gradually rises, steepening beyond the age of 50.

Causes.

A PARTICULARLY instructive part of the report is that devoted to the causes of accidents as assigned by chief constables of the various areas. Accidents attributed to excessive speed numbered 194 in built-up areas and 281 in other areas. It may be interposed at this point that the former areas witnessed 62·3 of the total number of fatal accidents, while 30 per cent. occurred at road junctions, and nearly 62 per cent. on straight roads or open road bends with good sight lines. Among causes assigned to the death of pedestrians—the number killed is inserted in brackets—are: crossing carriageway apparently inattentive to traffic (849), walking or running out from in front of or behind vehicle which masked movements (528), running into carriageway from footpath (329), stepping

into carriageway without looking (186), walking in carriageway (150), crossing recklessly (84), and boarding or alighting from a vehicle without due care (75). On the part of drivers, excessive speed having regard to conditions, failing to stop or reduce speed where necessary to avoid danger and failing to reduce speed when dazzled are regarded as solely or mainly responsible for the death of 527 persons. Other causes assigned are: improper overtaking, cutting in, pulling out to overtake, and pulling out from side of road (240 killed), apparent inattention (216), emerging or turning from one road into another without due care (191), and failure to keep to near side of road (186), while skidding, inexperience and failure to stop at pedestrian crossings are assigned respectively as the causes of 168, 41 and 30 deaths. In the foregoing notes it has only been possible to give a few representative figures. Readers desiring further information must be referred to the report itself. Enough has been said to show that while some welcome improvement has been effected, the road problem must still be regarded as substantially unsolved.

Land Registration.

We have little hesitation in saying that readers will find much to interest them in a recently-issued twenty-page pamphlet entitled "Registration of Title to Land," in which Sir John Stewart-Wallace, Chief Land Registrar, sets out the advantages of the system. Freedom from extreme technicality, finality, the removal of the possibility of *bonâ fide* mistakes or of fraud by duplication or suppression of deeds, a state-guaranteed safety and positive security against adverse claims, reduced costs, the ready detection of mistakes, and the reduction of litigation, are among the advantages claimed for registration which, it is also urged, enables a vendor to enter into a contract immediately and unreservedly and a purchaser to close without any necessity for a contract affecting title, while all the advantages enumerated render land more readily saleable and so increase its value and its attractiveness as a form of security. In the portion of the pamphlet devoted to the question of solicitors' costs it is stated that the case for registration of title is "not that landowners could or should normally deal with land without lawyers, but that by the elimination of the old-fashioned examination of title laymen are enabled, while employing lawyers, to deal with land at a greatly reduced figure after both lawyers' costs and Land Registry fees have been paid." The idea that landowners, usually fully occupied in other directions, will or could in the mass, in this generation, deal with registered land without solicitors is declared to be visionary. Indeed, it is said that the Land Registry could not be carried on at the present fees if that were done. The scheme of the Land Registration Act, 1925, with its provision for an insurance fund, indemnities, and a Land Registry maintaining itself out of its own fees, is not based on the idea of isolated laymen, one day in Cornwall and the next in Newcastle, applying for registration, but on the conception of an economic area where registration is compulsory after a sale, in which the purchaser has been professionally advised. The fact that solicitors' costs are diminished by the simplification and reduction of work done in connection with land registered with an absolute title does not, it is urged, by any means prove that the legal profession necessarily suffers diminished profits on the general turnover of business. "It is generally recognised," the author states, "that every reform having the effect of expediting business tends to increase profits. The growing experience of London solicitors shows that the Land Registry scale fee is more remunerative to them—owing to the reduced work and the absence of any responsibility for examination of title—than the higher scale in the case of unregistered land." It is noted that in London there is no apparent tendency for landowners to cease to employ solicitors when dealing with absolute titles—nor is it customary or, generally speaking, advisable or economical for those who are not lawyers to deal with registered land without consulting a solicitor. The pamphlet contains much other interesting matter to which it is impossible to refer here, but an estimate of the relative degree of simplification effected by the property legislation of 1925 and by registration, a comparative table of costs, and reduced facsimiles of a number of Land Registry entries which offer admirable illustrations of the matter contained in the text may be noted. The pamphlet is published by H.M. Stationery Office at 1s. net.

Rural Water Supply.

With regard to the amount of water available in rural areas the Committee on Water Resources and Supplies (some of whose recommendations were outlined in our last issue) is of opinion that, owing to the general alarm felt during the droughts of 1933 and 1934, the extent of the shortage, serious as it was in certain country areas, may perhaps have been somewhat exaggerated in the minds of the public. "It is true," the report states, "that water was cut off in many places, although sometimes this was done more as a precaution against, than as a result of, an actual shortage. Nevertheless, great or small, there was a shortage, as is evidenced by the fact that water undertakers have since been seeking additional sources of supply, with the effect that the number of areas in which there might still be a shortage is being reduced gradually." It is said that the shortage has to some extent been accentuated by bungalow building outside towns. The occupants of these are, it is noted, really town dwellers who expect to find the same amenities in rural areas as they enjoy in the towns. The Committee is, however, advised that the Ministry of Health, in its housing policy, is endeavouring to ensure the provision of these amenities. It may, perhaps, be repeated that the Committee's report was recently published by H.M. Stationery Office, price 3d. net.

The Tithe Act, 1936, and Rating.

In a recent communication sent to rating authorities (Circular 1564, H.M. Stationery Office, price 1d. net), the Minister of Health draws attention to certain provisions of the Tithe Act, 1936, affecting rating and valuation. Pending the distribution of grants to be paid to rating authorities in accordance with the provisions of s. 25 and the Fifth Schedule of the Act as compensation for loss occasioned by the fact that from 1st October next tithe rent-charge will no longer be a rateable hereditament—a subject upon which a further communication is to be sent—it is indicated that the grants to be paid to rating authorities in respect of the period beginning 1st October, 1936, will be based on the rate income from tithe rent-charge in respect of the financial year 1935–36. Any outstanding appeals and proceedings which may affect the rate income from the source in question in respect of that year should therefore be determined as soon as possible, and the Minister urges that steps be taken accordingly. Attention is drawn to the provisions of s. 19 of the Act to the effect that tithe rent-charge issuing out of land which on 1st April, 1936, was "agricultural" shall be payable at a lower rate, and to the provisions of s. 23, that no proceedings for the alteration of the rateable value of such shall be entertained on the ground of this reduction, but that the amount payable in rates for the half-year ending 30th September, 1936, shall be reduced to seven-eighths of the sum which would otherwise have been payable with consequent rights to a refunding of overpayments. Grants for this loss will be made in accordance with the provisions of para. 1 (*d*) of the Fifth Schedule. Instructions are given for suitable entries to be made in the rate book. Attention is also drawn to the information to be supplied to the Commission under s. 32 of the Act, which will also be required by tithe owners and their agents in connection with the operation of ss. 19 and 23. The Minister urges all rating authorities to give the fullest information possible to those persons and any others affected by the Act who may seek their assistance.

Assize Towns.

THE committee appointed " to review the present distribution of assize facilities and to report whether, due regard being paid to the recommendations of the Peel Commission, that the county should be retained as the judicial unit, any further town should be added to those which are already visited, or any town at present visited should be omitted," has now issued its report. A short summary of its recommendations follows.

The Committee, which consisted of Lord Finlay (Chairman), Sir George Etherton, Mr. Morgan Jones, M.P., Mr. N. L. Macaskie, K.C., Mr. W. A. Reid, M.P., Sir Claud Schuster, K.C., and Mr. F. J. Tucker, K.C., held thirteen sittings. The changes recommended are not numerous, " and this is, we are sure, fortunate, for," the report states, " much local feeling, expense, and trouble, are inevitably caused by the alteration of assize towns "—a fact which leads the Committee to express a hope that, when any of its recommendations which may be approved have been carried into effect, there may be a period of repose in this matter. Frequent inquiries, it is said, and threatened changes (very often not carried into effect) produce a sense of uncertainty and instability which is undesirable.

One further point should be mentioned before proceeding to the recommendations themselves. " We ought to explain," the report states, " that we have made some recommendations on matters which, though closely connected with our subject, cannot—on a strict view—be regarded as falling within our terms of reference. We need hardly say that we have made these recommendations solely with the hope that they may be of some assistance."

The Committee recommends that Beaumaris, Mold, Presteign, Oakham and Newtown (as alternative to Welshpool) should cease to be assize towns, and that the assizes for Merioneth and Montgomery should be held alternately at Welshpool and Dolgelly.

Agreement is expressed with the view favoured by the Business of Courts Committee and the Royal Commission that the North Wales and South Wales circuits should be amalgamated and the hope is expressed that it may be possible to give effect to it. This matter is described as one " probably not strictly within our terms of reference," but " a good deal referred to in evidence before us, and on which it is impossible for us to avoid forming a view."

The Committee did not favour the suggestion that Monmouth should be transferred to the South Wales circuit and that Chester should be transferred to one of the English circuits. Changes of that sort should be made only for strong reason, and the Committee saw no reason for taking the former town away from the Oxford circuit ; while, with regard to the latter, the case for maintaining its connection with the North Wales circuit appeared to be overwhelming " both in the interests of the general public and of the legal profession." Allusion is made to strong evidence as to the close connection of Chester with Wales, and it is recommended that in this matter things should remain as they are.

As to Monmouth, however, it is recommended that from the Winter Assize, 1939, Newport should be substituted therefor as the assize town for Monmouthshire. This is not to involve a change of circuit ; Newport, like the town displaced, is to be, according to this proposal, on the Oxford circuit.

At every assize it is recommended that two judges should visit both Cardiff and Swansea. Two judges should, moreover, visit Exeter, Bristol and Winchester at the Autumn Assizes.

It is proposed that Sheffield should be given an assize from the Autumn of 1940, to be visited by two judges. In this, as in the case of Newport, the privilege should be subject to the erection of a suitable assize court and adequate judge's lodgings.

Civil business should be taken on every circuit at every assize town visited by a judge, and, except at the last town and Liverpool and Manchester, at least twenty-one days' notice of trial should be required. The difficulty sometimes experienced of finishing the assizes at Liverpool and Manchester within a reasonable time is noted, it being essential that, in order that the judges should get to the latter place at the proper date, the assize at the former should not last more than four weeks. Manchester being the last town, the question of time is there somewhat less vital. But it is thought undesirable that the assize at Manchester should last more than four weeks, and accordingly recommended that a third judge should go to Liverpool and Manchester at the end of the first week of the assize unless the senior judge there reports that this is unnecessary.

In view of the local inconvenience alleged to be caused by the fact that the Norfolk Assize sometimes precedes and sometimes follows the Suffolk Assize, it is recommended that arrangements should be made for the judge always to proceed from Cambridge to Norwich and then on to Ipswich or Bury St. Edmunds.

Readers desiring further particulars to those outlined above must be referred to the report itself (Cmd. 5262—Report of the Circuit Towns Committee, H.M. Stationery Office, price 2d. net).

Company Law and Practice.

THE most usual ground, in practice, upon which a company is compulsorily wound up is its inability to meet its financial obligations, and it will be remembered that s. 168 of the 1929 Act enumerates six sets of circumstances in any one of which a company may be wound up by the court, the fifth being when it is unable to pay its debts (s. 168 (5)). The simplicity of the wording of this sub-section is refreshing, but, at first sight, the answer to the question of exactly when a company is in the position there mentioned is by no means so simple, for obvious reasons. Happily, however, the Legislature has provided us with an answer in s. 169, which goes a good distance towards the solution of our problem.

Inability to pay Debts as a Ground for the Compulsory Winding-up of a Company.

This last-mentioned section is in the following terms : " A company shall be deemed to be unable to pay its debts (1) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £50 then due, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or (2) if, in England or Northern Ireland, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or (3) " (though this does not so much concern us here) " if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest have expired without payment being made ; or (4) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company " (s. 169).

From time to time, there have been a good many decisions on the predecessors of this section ; and it is some of these authorities that I am going to consider to-day. Let us begin our investigation with sub-s. (1) of s. 169. The " demand " therein referred to need not be in any particular form, provided that it retains the character of demanding payment, and does not indicate the creditor's indifference as to whether or not the company complies with his request. Furthermore, it

seems that the word " demand " need not of necessity occur in the notice. For convenience, I might point out that a simple but effective form of notice is given in Form 27 of Palmer's " Company Precedents," 14th ed., at p. 71. It is, of course, addressed to the company and, in effect, peremptorily gives it notice that the creditor requires it to pay to him a specified sum owing by it to him, setting out the reason for the debt, and signed by the creditor. The sub-section, it will be noticed, places a creditor " by assignment or otherwise " in the effective position of his assignor; and in *In re Montgomery Moore Ship Collision-Doors Syndicate* [1903] W.N. 121, the court had to consider whether the demand could be served by a creditor who took an equitable assignment of the debt. The wording in the corresponding section of the 1862 Act (s. 80 (1)) contained, after the word " otherwise," which I have quoted, the words " to whom the company is indebted at law or in equity " ; and the court held that a creditor entitled to petition included a creditor by equitable assignment—a decision which seems equally applicable to the present section, in spite of its wording. The case of *In re Steel Wing Co. Ltd.* [1921] 1 Ch. 349, also deals with this point and confirms it; but it is equally important for our purposes, although for another reason, inasmuch as it decided that the assignment of part of a debt does not operate to pass the legal right to that portion of the debt. In equity, however, such an assignment operates to transfer the part assigned, the assignee then being constituted a creditor in equity of the original debtor; and as such he can, when the debtor is a company, present a petition for winding it up. But he cannot serve an effective demand for payment of his debt, such as is dealt with by s. 169 (1), in the absence of the person entitled to the remainder of the debt, and he must establish the company's inability to pay its debts in some way other than the service of such a demand.

As regards the figure of £50 which is named in the section, the court does not, generally speaking, make an order for compulsory winding up, under any of the sub-sections, unless the petitioning creditor's debt is at least equal to this amount. Thus, in *In re Herbert Standring and Co.* [1895] W.N. 99, a petition was presented in respect of a debt considerably lower than that amount (though the report does not name the actual figure), and the court intimated that in future, where the debt was small, no winding-up order would be made, or if the order was made, it would be without costs. This decision was followed four years later in the case of *In re Fancy Dress Balls Co.* [1899] W.N. 99, where Wright, J., observed that the High Court is reluctant to lend itself as a collector of small debts by means of its winding-up jurisdiction, and where the debt on which the petition was founded was small in amount, the petitioner should allege and make out some special ground for making a winding-up order; the petitioners there were judgment creditors for £21 and execution had been returned unsatisfied. And, again, Neville, J., in *In re Industrial Insurance Association Ltd.* [1910] W.N. 245, dismissed the petition of a judgment creditor for £41, saying he understood the practice of the court to be that it does not make an order on a petition for winding-up a company when the petitioner's debt is less than £50 unless special circumstances exist. Two instances of special circumstances are the decisions in *In re Yates Collieries and Limeworks Co.* [1883] W.N. 171, and *In re The World Industrial Bank Ltd.* [1909] W.N. 148, in each of which an order was made. In the former, the debt was below the specified figure, but the judgment creditor's evidence was that execution had not been issued because the company's solicitors had informed him that a mortgagee had taken possession of all its property, and there was nothing on which he could levy execution; and in the latter, the debt being £36 and the company's only asset being its uncalled capital, Neville, J., commented on the importance of preventing the Companies Acts being used as an instrument of fraud; the debt which the company had incurred could have been easily discharged by means of its uncalled capital, but the creditor was met with default because the company refused to make calls, and he thought he could not file a petition. That being so, an order for winding-up was made.

But even if the petitioning creditor's debt is greater than £50, and if the company admits the debt and that it exceeds that figure, the creditor is not entitled to a winding-up order if there is a *bonâ fide* dispute, between the company and himself, as to the amount that is in fact due: *Re The Brighton Club and Norfolk Hotel Co. Ltd.*, 35 Beav. 204; " it is not sufficient for the company to say ' we dispute the debt,' they must show some reasonable ground for doing so "—per Romilly, M.R., at p. 205. However, should the petitioning creditor serve on the company a demand for a sum greater than that which is actually found to be due to him, the winding-up order made on his petition (the amount actually due exceeding £50) is not thereby invalidated: *Cardiff Preserved Coal and Coke Co.* v. *Norton*, 2 Ch. App. 405; as Lord Chelmsford said: " . . . the amount due was known to the company, and was included in the demand, and the company neglected to pay ' such sum,' which means not the sum demanded, but the sum due, which they might have paid and so prevented the order being made. The construction contended for would make every winding-up order bad where the creditor had demanded the smallest sum above what was actually due to him " : 2 Ch. App. at p. 410. And it appears, from *In re Leyton and Walthamstow Cycle Co.* [1901] W.N. 225, that although the petitioning creditor's debt is only for £35, if he is supported by other creditors and the total indebtedness of the company exceeds the specified figure, the winding-up order will be made with costs, whereas, were the petitioning creditor all alone, the order, if made at all, would probably be without costs.

Where a creditor elects to proceed under sub-s. (1) of s. 169, he has the right to have the debt either paid or secured within twenty-one days of the service of his demand; but he may not present his petition to wind up the company until the expiry of this statutory period: see *In re The Catholic Publishing and Bookselling Co. Ltd.*, 33 L.J. Ch. 325 " . . . there is no jurisdiction in the court to make the (winding-up) order unless the company is unable to pay its debts, and therefore, it is impossible to say the twenty-one days can be taken to be running after the period of presentation of the petition. The opposite is a construction which, it seems to me, would be wholly unwarranted on the meaning of this Act of Parliament " : per Turner, L.J., at p. 331. The sub-section speaks of " neglect " on the part of the company to pay or secure the debt, and the creditor must prove also this neglect before the presentation of the petition. But the company's omission to comply with the notice is not neglect within the sub-section unless there is no reasonable cause for the omission. This is clear from the decision in *In re London and Paris Banking Corporation*, 19 Eq. 444. Jessel, M.R., remarked at p. 446: " It is very obvious . . . that the word ' neglected ' is not necessarily equivalent to the word ' omitted.' Negligence is a term which is well-known to the law. Negligence in paying a debt on demand, as I understand it, is omitting to pay without reasonable excuse. Mere omission by itself does not amount to negligence. Therefore, I should hold, upon the words of the statute, that where a debt is *bona fide* disputed by the debtor, and the debtor alleges, for example, that the demand for goods sold and delivered is excessive, and says that he, the debtor, is willing to pay such sum as he is either advised by competent valuers to pay, or as he himself considers a fair sum for the goods, then in that case he has not neglected to pay, and is not within the wording of the statute." As to service of the demand, it appears from *Re The British and Foreign Generating Apparatus Co. Ltd.*, 12 L.T. 368, that it may validly be served at the company's unregistered office, if it has no registered one: and see also s. 370.

Sub-sections (1), (2) and (3) of s. 169 are all methods by which a creditor may seek to prove that the company is unable to pay its debts, and each of these sub-sections is an

instance of what is known as "commercial insolvency." Inability to pay debts to which the section refers means "an inability to pay debts absolutely due—that is to say, debts for which a creditor may go at once to the company's office and demand payment": per James, V.-C., in *In re European Life Assurance Society*, 9 Eq. 122, at p. 127. And "commercially insolvent" means that "its assets are such, and its existing liabilities are such, as to make it reasonably certain—as to make the court feel satisfied—that the existing and probable assets would be insufficient to meet the existing liabilities . . . the court has nothing whatever to do with any question of future liabilities . . . it has nothing whatever to do with the question of the probability whether any business which the company may carry on to-morrow or hereafter will be profitable or unprofitable. That is a matter for those who may choose to be the customers of the company and for the shareholders to consider": *ibid.*, at p. 128; and see *Ex parte Spackman; In re The Agriculturist Insurance Co.*, 18 L.J. Ch. 261, where the matter arises and the test of insolvency is considered. But, as a reference to the actual wording used in sub-s. (4) of s. 169 will show, these various modes of proving insolvency set out in the three previous sub-sections, are, practically speaking, in effect comprised in this sub-s. (4), and it is open to the creditor to prove insolvency in any way he can so as to bring his claim within that sub-section. One method is shown by the facts in *In re Yates Collieries and Limeworks Co., supra*, with which I have already dealt, and similar facts existed in *In re Flagstaff Silver Mining Co. of Utah*, 20 Eq. 268; another is illustrated in *In re Globe New Patent Iron and Steel Co.*, 20 Eq. 337, where the petitioning creditor sold goods to the company, the latter giving in part payment an acceptance which was dishonoured on presentation and continued unpaid. As to the words "contingent and prospective liability of the company," which occur in s. 169 (4), and which have to be taken into account by the court in considering whether the company is able to pay its debts, there is authority, in the shape of the decision in *In re British Equitable Bond and Mortgage Corporation Ltd.* [1910] 1 Ch. 574, for the proposition enunciated in "Buckley on the Companies Acts," that these words refer only to possible liabilities under contracts and engagements already existing, and not to liabilities which the company may incur in the future in carrying on its business. The decision is not an easy one to summarise; and that fact, together with the restrictions of space to which we are subject, compel me to leave further investigation of this point to the diligence of my readers.

A Conveyancer's Diary.

[Contributed.]

Estate Contracts and the General Conditions.

The writer lately had occasion to deal with a comparatively straightforward case on the subject of estate contracts, whose surprising developments appear to be of some general interest. Some years ago, A, the estate owner in fee simple of Blackacre, contracted to sell to B. The contract incorporated the General Conditions of 1925 (1928 Edition), and was in a perfectly normal form. The completion date being some time ahead, B registered it as an estate contract under the Land Charges Act, s. 10, Class C (iv). When the date for completion arrived, B failed to complete, and A gave the necessary notice for rescission under cl. 36 of the General Conditions, but no step was taken to clear the register. Shortly afterwards, A sold to X, and owing to a mistake in the conveyance conveyed to him subject to the contract. This procedure was unfortunate, and appeared to have the effect of waiving the rescission, and giving B another chance to complete. After the conveyance, of course, X stood in A's shoes so far as the contract was concerned, since cl. 37 (1) of the General Conditions provides that the expression "the vendor" includes both the original vendor and persons claiming under him. X therefore was in a position to give a fresh notice under cl. 36, and rescind the contract again. As a matter of fact he did not do so, but before long succeeded in entering peaceably and taking possession of Blackacre.

Two or three years elapsed, and X wished to sell Blackacre. But he was considerably handicapped by the fact that his conveyance from A referred to the contract. Moreover, the estate contract was still on the register. Once more notice was given under cl. 36. It is worth noticing, incidentally, that as there is no provision in the General Conditions for these notices to be served by post to the last known address, X had to have the notice served personally on B and experienced a good deal of trouble in finding him. However, the notice was ultimately served and the time elapsed. But the estate contract was still on the register. The Land Registry were apprised of the facts, and declined to vacate the register without the written consent of B, the person in whose favour the land charge was registered. For some reason best known to himself, B refused to sign such a consent in consideration of a small sum. What was X to do next?

At this point it is necessary to look at the law on the subject. By sub-s. (8) of s. 10 of the Land Charges Act, it is provided that "The registration of a land charge may be vacated pursuant to an order of the court or a judge thereof." This procedure would require a summons in the Chancery Division "not *inter partes*," and X was naturally unwilling to incur the expense if it could be avoided. Section 19 of the Act appeared to offer a way out. It is there laid down that "The Lord Chancellor may . . . make such general rules as may be required for carrying this Act into effect, and in particular . . . (*b*) for providing for the mode of registration of a land charge . . . and for the cancellation without an order of the court of the registration of a land charge, on the cesser thereof, or with the consent of the person entitled thereto . . ." On this provision the learned editors of "Wolstenholme" observe that an estate contract may be rescinded or released, thus appearing to imply that it would be possible to get the register vacated under the rules made in pursuance of this section without an order of the court. This impression is borne out by an examination of the rules made by the then Lord Chancellor in 1925. Rule 10 provides:

> "(1) Applications for the entry of satisfaction, cesser, discharge, vacation or cancellation of a registration shall be made on, and shall furnish the particulars set forth in, the several forms for these purposes given in the Schedule hereto, or such other forms as the Registrar shall from time to time determine.
>
> "(2) Such evidence in respect thereof as the Registrar shall think necessary shall also be furnished if required."

In the Schedule there is provided a form (L.C.8), headed "Cancellation of an entry in the register other than a deed of arrangement." Immediately after this heading follow in brackets and italics the words, "Form L.C.6 should be used where the cancellation is in pursuance of an order of the Court," thus clearly implying that L.C.8 is for use where the discharge is to be made under the Rules without an Order. In the margin of the form is the note: "To be signed by the person in whose favour the registration was made. If the applicant is not such person, *ordinary conveyancing evidence of his title to make this application* must accompany this form . . ." (our italics).

Accordingly, X prepared a statutory declaration as being the ordinary conveyancing evidence on this sort of subject, setting out the history of the estate contract and its rescission, and requested the vacation of the register on the strength of it. Again the Registry refused to act without the written consent of B, the person entitled to the benefit of the

charge. B, having already refused to sign such a consent, and being at a distance, it was not thought worth while to ask him again. X therefore determined to proceed by summons after all, and when the summons, which asked for a vacating order and costs against B, was served on him, B finally crumpled up and signed the consent to vacation.

The whole story is unfortunate, as a great deal of time and trouble was thrown away, and some unnecessary expense was incurred. The attitude of the Registry is somewhat surprising, but the officials there appear to have been within their rights in insisting on an order of the court or the consent of B, as there seems to be nothing in the Act or Rules to compel them to act upon less. Whether there should, or should not, be some mandatory provision on the subject is another matter, which will deserve serious consideration next time the property legislation of 1925 is reviewed. It seems absurd that under r. 7 an estate contract or other charge can be registered upon the mere unsupported application of a practising solicitor, or upon a statutory declaration by anyone, but that there should be no rule or section to compel the vacation of the register on anything less than an order of the court. That, however, is not our business at the moment. What we are concerned with is to point out the difficulties that are actually met with in ridding oneself of such a charge. It appears to be impossible to rely on the Rules providing means for vacating the register without an order of the court, unless one can produce the signed consent of the person entitled to the benefit of the charge. The marginal note to Form L.C.8 is definitely misleading. It has further to be borne in mind that the case we have been considering was a comparatively easy one, as, though B was at a distance, he was in fact accessible. If he had not been so, further difficulties would have arisen, as it would have been impossible to effect the personal service apparently required by the General Conditions or the service of the summons. The latter could have been got round by obtaining an order for substituted service, though again that would have involved further expense; it seems, however, that the former would have involved a prior application to the court to get the contract declared void, again with substituted service. This flaw in the General Conditions deserves the attention of those whose business it is to draw up such contracts. If the contract is to make notice requisite, there should be express provision for service by post to the last known address. Alternatively, the plan adopted in the "National Conditions" (13th ed.) could be made applicable; under those conditions rescission by the vendor over difficulties in the abstract can be effected (condition 4) by notice in writing to the purchaser *or his solicitor*, and the power of re-sale on failure by the purchaser to carry out his contract is exercisable "with *or without* notice" (condition 20).

Landlord and Tenant Notebook.

Duty to Fence Stock.

THE duty of an occupier of land to keep his livestock fenced has been recognised by law for many centuries; but from time to time attempts have been made, with varying success, to impose qualifications on to the general rule. Some of these attempts concern the relationship of landlord and tenant.

It was held in *Wiseman* v. *Booker* (1878), 3 C.P.D. 184, that an occupier might succeed by establishing statutory liability in someone else. The facts were that the plaintiff had purchased crops of vegetables growing on land alongside a railway line, the vendor being tenant thereof under the railway company. The defendant occupied adjoining land separated from the railway land by a post and rail fence, not substantial enough to prevent his cattle from helping themselves to the growing vegetables to the value of £5 1s., for which amount he was sued. Now the railway company had acquired their land under the Railways Clauses Consolidation Act, 1845, of which s. 68 obliged them, for the accommodation of adjoining occupiers, to erect fencing sufficient to protect the land from trespass, or their cattle from straying. And a Divisional Court, reversing the judgment of the County Court, held not only that there was a duty on the railway company which they had broken, but also that there was no duty on the defendant to fence his stock.

The limits of this type of qualification were gone into in *Coaker* v. *Willcocks* [1911] 1 K.B. 649. Liability to fence *against* stock was on the defendant, who was sued for illegal seizure of sheep distrained by him damage feasant, the liability in question being derived from an Inclosure Act affecting Dartmoor. It was accordingly argued that he was the author of his own wrong. But it appeared that the trespassers were not moorland sheep of ordinary capabilities, but imported Scottish sheep "of peculiarly wandering and saltative disposition," as Darling, J., described them; and it was held that while non-moorland sheep might become commonable, the defendant was not obliged, as it were, to emulate Hadrian.

The above two cases illustrate respectively the nature and the extent of duties of similar origin, and the consequence of such duties being imposed. I will now mention a case in which an attempt to qualify the general rule failed for a different reason.

This was *Holgate* v. *Bleazard* [1917] 1 K.B. 443, in which the plaintiff sued for damage done by his neighbour's cattle when trespassing on his land. It appeared that both parties were tenants of the same landlord; that the plaintiff was under covenant to keep the dividing fence, through which the cattle had strayed, in good and tenantable repair; and that they had entered through a gap in that fence. Accordingly, the defence relied on one of the exceptions to the main rule in *Fletcher* v. *Rylands*, namely, default by the plaintiff. But the court held that this exception did not apply when the default consisted of a breach of duty towards a third party. The covenant between the plaintiff and his landlord did not relieve the defendant from the consequences which as a general rule followed when a person's cattle escaped from his field through a gap in the fence. While *Wiseman* v. *Booker* and similar cases were distinguished in that here the duty was a creature of the plaintiff, there of the general law of the land.

One cannot help asking oneself whether this distinction is not one of those without difference. The law is not in the habit of concerning itself much with the origins of duties which it is its function to enforce. True, it does so in this case for the purpose of defining effects on third parties only, but it does seem anomalous for one farmer to be able to say: "I need not fence my stock, because Parliament has ordered X to make a fence," while another can say: "Though I have promised X to look after the dividing fence, you must build another or take the consequences."

Examining the judgments delivered in *Wiseman* v. *Booker* in detail one comes across at least one possible fallacy. Apart from the fact that one is left wondering whether the plaintiff had any remedy at all for the loss of his cabbages, and, if so, whether he could have successfully sued the tenant-vendor or the railway company, or both, the reasoning appears to be that because the company were under a duty to fence the defendant was not obliged to do so.

A further difficulty is that Parliament might be said to have dealt with trespass from, rather than to, railway-owned land; and, as regards straying, to have contemplated the risk of injury to the animals rather than the risk of them doing damage; but those points are at least dealt with and disposed of in one of the judgments, and there are, of course, no one-way fences. If the proposition be: A is under a duty to B, therefore C cannot be under that duty to B, the obvious comment is "*non sequitur*." And a recent decision, which

created a minor sensation in its own sphere at the time, bears this out. *Wilchick* v. *Marks and Silverstone* (*Silverstone, Third Party*) [1934] 2 K.B. 56 (discussed in the "Notebook," 78 SOL. J. 443 and 464), laid it down that a landlord who has reserved the right to repair the demised premises is responsible to passers-by for injuries occasioned by their disrepair of which he has had notice. But it also laid it down that the tenant is no less liable, as occupier, for the nuisance. Neither liability is statutory, it is true; nor is either liability contractual. If the tenant defendant in this case could not escape liability by establishing common law liability in another party, it is indeed anomalous that a farmer should be excused responsibility for cattle trespass by pointing to someone else's default. One's criticism is strengthened by the consideration that the two duties in this case are not, strictly speaking, identical; the duty on the farmer, though commonly spoken of as the duty of every man to fence his own stock, is actually a negative duty not to commit trespass, which he can fulfil in any way he likes, e.g., by keeping no livestock, or by employing someone to tend them if he does. Whereas the railway company are under a positive liability of which only the nature and extent are described by reference to cattle trespass. Leading cases such as *Wilchick* v. *Marks* have a way of upsetting more decisions than are actually cited in them, and it seems fair to suggest that the proposition that C is under no duty to B, by reason of the fact that A has failed to perform some statutory duty the performance of which would have greatly assisted C in the observance of his own duty, is no longer to be relied upon.

Our County Court Letter.

FORCIBLE RE-ENTRY BY LANDLORD.

A LANDLORD is entitled to resume possession only by peaceable re-entry, and renders himself liable to an action if his re-entry is forcible. The difficulties in which a landlord may thus become involved were illustrated in *Smith* v. *Timmis*, recently heard at Stoke-on-Trent County Court. The plaintiff's case was that, during his absence at work, the defendant (who was the landlord) and his wife forced their way into the plaintiff's house. The defendant unscrewed the doors, while his wife chopped them down, and the kitchen sink was also removed. There had been no outer doors at the house since April. The defendant's case was that, as the house was decontrolled, he believed he was entitled to use force to obtain possession, after the tenants had refused to quit. His Honour Deputy Judge Burne observed that landlords were not entitled to obtain possession by forcible means, even against tenants who were trespassers. A landlord could take possession only if he could do so peaceably, otherwise his remedy was through the courts. Judgment was given for the plaintiff for £7 and costs, and the defendant was ordered to replace the doors of the house.

The removal of a roof, however, may be justified in circumstances such as those in *Jones* v. *Foley* [1891] 1 Q.B. 730. The defendant had obtained a warrant for delivery of possession under the Small Tenements Recovery Act, 1838, and, before the expiration of the twenty-one days, he removed the roof, with a view to rebuilding. The plaintiff's furniture was thereby damaged, and he recovered judgment in the county court. This decision was reversed by the Divisional Court (Mr. Justice Day and Mr. Justice Lawrance), who held that the facts disclosed no cause of action.

Some of the cases on this subject are not easy to reconcile, and the decisions were reviewed in *Hemmings* v. *Stoke Poges Golf Club Limited* [1920] 1 K.B. 720. The plaintiff and his wife had refused to give up a cottage, after leaving the defendants' service, and several persons subsequently entered the cottage, and removed the plaintiffs and their furniture. An action was brought for assault, battery and trespass, but the defence was that no more force had been used than was necessary. Mr. Justice Peterson gave judgment for the plaintiffs for £21, but this decision was reversed by the Court of Appeal, viz., Lords Justices Bankes and Scrutton and the present Lord Merrivale. It was held that the defendants' right of entry was a good defence to the civil proceedings, in respect of the acts upon which the claim was based. Nevertheless the landlord may still be liable to prosecution, under the statute, 5 Ric. 2, stat. 1, c. 7, which provides that none make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner.

The mistake made in *Smith* v. *Timmis*, *supra*, was that the defendant (in the words of the learned deputy county court judge) was going back to the Middle Ages, i.e., by going to his house armed with an axe.

THE LIABILITIES OF RIDING SCHOOLS.

IN *Taylor* v. *Hilfield Park Riding School*, recently heard at Clerkenwell County Court, the claim was for damages for negligence. The plaintiff's case was that, while riding side-saddle, she was injured by a fall. After several operations on her arm, certain scars remained, which would be noticeable whenever the plaintiff wore evening dress. The defence was a denial of negligence, and contributory negligence was alleged, on the ground that the plaintiff failed to keep to the riding track, to ride with sufficient care and attention, to check the speed of or to exercise control over her horse. His Honour Judge Earengay, K.C., observed that the accident had happened at a ditch, which was a source of danger to a comparatively inexperienced and nervous rider, such as the plaintiff. Judgment was given in her favour for £650 and costs. Compare a previous note under the above title in our issue of the 14th March, 1936 (80 SOL. J. 201).

Obituary.

MR. O. S. HOOPER.

Mr. Oswald Stokes Hooper, Barrister-at-Law, of Harrington-street, Liverpool, died at Penmaenmawr on Tuesday, 11th August, at the age of fifty-one. Mr. Hooper, who was educated at Rossall School, qualified as a solicitor and entered into partnership with Mr. N. Fairbairn, of Dudley. He was called to the Bar by Lincoln's Inn in 1918, and since that time he had practised in Liverpool and on the Northern Circuit.

MR. D. J. DAVIES.

Mr. David John Davies, solicitor, head of the firm of Messrs. D. J. Davies & Son, of Cardiff, died recently at the age of sixty-seven. Mr. Davies was admitted a solicitor in 1899.

MR. C. L. B. GROVER.

Mr. Charles Lewis Brockett Grover, solicitor, a partner in the firm of Messrs. Grover, Smith & Moss, of Manchester, died at a nursing home in Manchester on Saturday, 22nd August. Mr. Grover was admitted a solicitor in 1894.

MR. R. MARTIN.

Mr. Ragau Martin, solicitor, of Tunbridge Wells, died at Milton, Hants, on Tuesday, 18th August. Mr. Martin, who was admitted a solicitor in 1877, was about eighty years of age.

MR. H. MIDDLETON.

Mr. Harold Middleton, solicitor, of Crewe, died on Friday, 21st August, at the age of forty-six. Mr. Middleton was admitted a solicitor in 1920. He was Deputy Clerk to the Magistrates at Crewe and Nantwich.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Debenture Holders and Execution.

Q. 3365. A is a limited company, and some years ago created a debenture issue secured by a trust deed, whereby a fixed charge was created on its freehold and leasehold properties in favour of the trustees for the debenture holders, and whereby also they charged their moveable assets in favour of the trustees by way of floating charge. The limited company has from time to time paid the debenture interest and carried out the conditions of the trust deed. Legal proceedings have now been instituted against the limited company by third persons, claiming a very substantial sum of money for alleged breach of contract. In the event of judgment being given against the limited company, and of the judgment creditors seeking to enforce the judgment by levying an execution on the moveable assets comprised in the floating security, what is the position of the debenture holders? As we understand the law it is this. When the sheriff seizes, the debenture trustees should give notice claiming the goods seized as being comprised in their security, and in that case their title will have priority as against the sheriff and the execution creditor. On the other hand, if before the claim is made by the debenture trustees, the sheriff sells the goods or payment is made to him by the limited company, then the claim of the execution creditor will prevail against that of the debenture trustees. The cases dealing with the point appear to be: *Davy & Co.* v. *Williamson & Sons* [1898] 2 Q.B. 194; *Heaton & Lugard Ltd.* v. *Cutting Bros.* [1925] 1 K.B. 655.

A. The position is correctly stated in the question. As soon as the execution is complete the judgment creditors' rights are indefensible. A question may arise as to whether the execution is complete, in the circumstances arising in *In re Godwin* (1934), 78 Sol. J., 930, and *In re Samuels* [1935] Ch. 341. Unless the judgment debtor pays by instalments, however, no question arises of the nature discussed in those two cases.

Will—No Reference therein to any Memorandum in Writing Disposing of Chattels — Memoranda not Executed as a Will Disposing of Chattels—Effect.

Q. 3366. In January, 1935, a testator made his will whereby, after giving certain pecuniary legacies, he devised all his real and residuary personal estate in trust for sale and conversion and to be divided amongst certain nephews and nieces. He made no specific bequests, nor did he refer to any memorandum or other direction in writing that he might make afterwards. He died in December, 1935. Amongst his papers there was found a document consisting of three separate sheets of paper, two of which were dated 2nd April, 1935, and were signed by him and another person, the latter, presumably, being a witness; the third sheet was neither dated nor signed. The document is an inventory of part of his household goods, and opposite to each item is written a name, e.g., Mary, which corresponds with the name of one of his nieces. In one case, a dozen items are looped together, and the words "for Ethel" are written against them. The two nieces presumably referred to in the list claim the articles against which their names are written, but the other residuary legatees object to their having them. We have advised the executors of the will that there is not a valid testamentary gift of any of the articles, because the deceased's signature has not been attested by two witnesses, and also because neither donee is sufficiently identified. We have also advised them that there was not a valid gift *inter vivos*, because there was no delivery of any of the articles to either donee, and, as neither of them resided in the same house as the deceased, there could be no constructive delivery. We shall be much obliged if you will inform us whether you consider our view of the legal position to be correct. But if you hold a contrary opinion, please state whether you except the articles specified on the unsigned sheet.

A. We are of opinion that our subscriber's view of the legal position is quite correct.

Entailed Interest—Protector of Settlement—Who is.

Q. 3367. A freehold estate was settled by will, by a testator who died in 1917, as follows: (*a*) To the use of his son A during his life with remainder; (*b*) to the use of the sons of A in tail male with remainder; (*c*) to the use of his daughter E during her life with remainder; (*d*) to the use of his daughters M and F as joint tenants during their lives with remainder; (*e*) to the use of the survivor of such last-mentioned daughters during her life with remainder; (*f*) to the use of the first and other sons successively in order of seniority of the daughter E in tail male; (*g*) to the use of the first and other sons of the first and other sons of the daughter E in tail general with remainders over. The son A died in 1929 without issue. The daughter E is still living and in enjoyment of the settled property. The daughters M and F are both living. The daughter E has had two sons but no other children. The elder son is dead without issue. Her younger son W is alive and has at present two daughters. W desires to bar his entailed interest, but some doubt is felt as to who in the circumstances of the case is the "protector" of the settlement whose consent is necessary. We shall be glad if you will let us know who in your opinion is the protector in the circumstances of the case.

A. We express the opinion that E is the protector. See s. 22 of the Fines and Recoveries Act, 1833. It is the owner of the *first* estate for years determinable on a life or lives or any greater estate (not being an estate for years) prior to the estate tail and subsisting under the same settlement who is the protector.

Liability for Straying Dogs.

Q. 3368. A, the owner of two setters, occasionally walks with them through a wood which is apparently the property of the Forestry Commission. There are many paths through the wood which are used by the public and the only notices posted up are warnings not to light fires or drop lighted matches. Consequently, it is assumed that the public have access to the wood. A has been told that in walking in the wood he must keep his dogs on the leash because of fur and feather game. Having regard to the fact that (1) the Forestry Commission own the wood, (2) there are no game notices posted, and (3) A's dogs might set up but would not kill game, what risk does A run in allowing his dogs to exercise whilst going through the wood? Does A run any risk of criminal or civil proceedings and upon what grounds?

A. In the absence of bye-laws applicable to the wood in question, it is difficult to see what risk of civil or criminal proceedings can be run by A. The answer to both questions is, therefore, nil. There is no evidence of intent to constitute an offence under the Game Act, 1831, s. 23, or the Game Licences Act, 1860, s. 5.

To-day and Yesterday.

LEGAL CALENDAR.

24 AUGUST.—On the 24th August, 1861, the Baron de Vidil, a French nobleman of some standing in English society, where he was well known as an adherent of the exiled House of Orleans, was indicted at the Old Bailey for the attempted murder of his only son. His financial circumstances were embarrassed, and he knew that if the young man died without issue, he would become entitled to a capital sum of £30,000 under the marriage settlement of his deceased wife. Therefore, having taken the boy to ride in the secluded lanes about Twickenham, he savagely attacked him with the handle of his riding-crop. The boy escaped, and the assault was revealed, but in court he refused to testify against his father, and was committed for contempt. There was, however, enough evidence to convict of unlawful wounding. The sentence was twelve months' hard labour.

25 AUGUST.—On the 25th August, 1843, Lieutenant Cuddy, of the 55th Regiment, was tried at the Old Bailey for murder. He had acted as second in a fatal duel when Colonel Fawcett, of the same regiment, was killed. The only witness called for the defence was a general, who began his evidence thus: "The officer I see at the bar—I don't call him prisoner—I recognise to have been the officer who was almost the first to escalade the walls of one of the largest cities in China." Though this enthusiastic irrelevance was checked, it had its effect on the jury, who, despite a careful summing up by Williams, J., acquitted the accused, the verdict being received with a burst of applause.

26 AUGUST.—In Ireland, about a century ago, the county magistrates showed considerable hostility to the Bar, and often by the rules of their courts excluded them from practice there. A climax was reached on the 26th August, 1829, when, an important point of law having been raised at the Bruff Petty Sessions, a barrister who attempted to address the Bench was first refused a hearing, and finally put into the dock. The whole Bar took up his cause with the Lord Chancellor, and after a good deal of acrimony, the rule against counsel was universally rescinded.

27 AUGUST.—On the 27th August, 1804, Anthony Cleasby, the son of a prosperous broker in the Russian trade, was born. He was called to the Bar at the Inner Temple in 1831, becoming better appreciated as a profound lawyer than as a great advocate. He was made a Baron of the Exchequer in 1868. He was too diffident to be a popular judge and too mild to be at home in criminal courts.

28 AUGUST.—We are told that on the 28th August, 1772, there "was executed and afterwards hung in chains on a gibbet thirty feet high on Campden-hill in Gloucestershire, William Kelly for the murder of Richard Dyer, a gardener at Campden. He persisted in denying the fact and called God to witness his innocence till he came to the spot where the murder was committed, and then he confessed that he overtook Dyer on the road, walked with him till he came to a stile where, in getting over, he struck him with a hedge-stake and killed him." The crime was not premeditated and after it he ran away frightened and did not rob him. Kelly was twenty-two.

29 AUGUST.—On the 29th August, 1933, Sir Percival Clark charged the last Grand Jury at the London Sessions before the virtual abolition of that venerable institution took effect. He said: "My charge to you to-day is in the nature of a swan song, with this difference—that it is the listener and not the singer who is to expire." He went on to observe that Grand Juries probably began in the reign of Ethelred II (978–1016).

30 AUGUST.—On the 30th August, 1667, Lord Chief Justice Bridgeman was appointed Lord Keeper. He held the office for five years.

THE WEEK'S PERSONALITY.

Though Sir Orlando Bridgeman had made an excellent common law judge, he did not distinguish himself in equity when he went from the Common Pleas to the Woolsack. One critic described him as "timorous to an impotence and that not mended by his great age. He laboured very much to please everybody, a temper of ill consequence to a judge. It was observed of him that if a cause admitted of diverse doubts, which the lawyers call points, he would never give all on one side; but either party should have something to go away with. And in his time the Court of Chancery ran out of order into delays and endless motions in causes so that it was like a fair field overgrown with briars." Another writer says that "as Chief Justice of the Common Pleas, he was in great esteem which he did not long maintain after his advancement. His study and practice lay so entirely in the Common Law that he never seemed to apprehend what Equity was, nor had he a head made for the business of such a Court." Still Lord Chancellor Nottingham said of him: "It is due to the memory of so great a man whenever we speak of him to mention him with reverence."

FROM BAR TO DOCK AND BACK.

The trial of a barrister for murder is a sufficiently rare occasion to be notable, and long may it remain so, though the outcome of the recent case has been fortunate, the appeal of the accused, who was a member of the Inner Temple, from a conviction by the Supreme Court of Ceylon, being allowed. The most eminent barrister ever to go through such an ordeal in England was not only exculpated, but rose to become Mr. Justice Cowper. At the time of the trial, he used to go the Home Circuit. A romantic young lady of Hertford fell violently in love with him—unfortunately, for he was a married man and did not respond to her passion. In March, 1699, while the assizes were being held in the town, she was found drowned in a mill-pond. The animosity of certain political enemies in the town made the most of some suspicious circumstances, and Cowper was arrested. His trial for her murder was remarkable for the obtuseness of the judge and the conflict of the expert medical evidence on the vital point whether the fact that the body had been found floating indicated murder or suicide. The judge who had been quite unable to follow the scientific evidence concluded with the lamest of charges to the jury who, nevertheless, reached a proper verdict and promptly acquitted the accused.

Lapsus Linguæ.

When a lady at the Bar used the expression "carrying on" at the last Birmingham Assizes, Mr. Justice Swift said that he did not understand the meaning of the phrase. She thereupon apologised for this very moderate excursion into the realm of slang, but the judge told her not to apologise. "You are teaching me," he said, "leading me to higher things." Hawkins, J., was extremely vigilant in his defence of correct expression. When a counsel whose witness could not be found observed that it was very difficult "to keep witnesses up to scratch," he put on an astonished look and asked "Up to what?" "Scratch, my lord." "What is that?" "I beg your lordship's pardon. I mean, to keep my witnesses in court." "That is better. I now understand you." Lord Coleridge was equally strict. The phrase "come to grief," in relation to a company in liquidation, drew from him the stern rebuke: "What do you mean? Please do not use slang in my court." He added: "I must insist on pure English being spoken in my court, not slang."

Mr. Thomas Drinkwater Syers, retired solicitor, of Huyton, Lancs, formerly of the firm of Messrs. Syers, Dickson and Barrell, solicitors, of Liverpool, left £8,582, with net personalty £7,155.

Reviews.

Reflections and Recollections. By His Honour J. D. Crawford. 1936. Demy 8vo. pp. 288. London: Marchand Press, Ltd. 12s. 6d. net.

It is always interesting to have the opportunity of seeing a man much in the public eye as he saw himself. This book shows a judge sincerely anxious to do justice in the disputes of the poor, and happy in the belief that he was succeeding. The difficulties that a county court judge must cope with in the least pampered of our tribunals are brought home to the reader. In particular, the author has some telling chapters on the needless complexities of the Rent Restriction Acts, as the thoughtlessness of the politicians tossed them to the courts, ill-planned, ill-considered and often incomprehensible. As for the blemishes of this book, there is little to find fault with except an occasional carelessness in style. Such a sentence as, "many of the landlords . . . were poor people, as poor, and often poorer than their tenants" is clear, but might have been tidied up by revision. The author's account of his struggle against ill-health and imperfect eyesight makes an encouraging story, and, in writing of his boyish aspirations to the Bench, he tells a charming little tale of how he used to try his dog for various offences, the intelligent animal entering into the spirit of the performance.

The Secretary's Manual. By His Honour Judge Haydon, M.A., K.C., and Sir Nicholas Waterhouse, K.B.E., F.C.A. Twenty-third Edition. 1936. Demy 8vo. pp. xxxii and (with Index) 521. London: Jordan & Sons, Ltd. 10s. net.

The twenty-third edition of this standard work is the first in which the Accountancy portion of the work has been in the hands of Sir Nicholas Waterhouse, in succession to Sir Gilbert Garnsey, who had been responsible for the four previous editions. Recent cases have been noted in the new edition and we are told that Mr. Justice Bennett's refusal to admit a loose-leaf minute book in evidence is not regarded by the learned author as necessarily affecting companies which use such books but take proper precautions in regard to their handling. It is perhaps a little surprising that a work which has passed through so many editions should still show minor defects in the arrangement of the Table of Cases and Index. It is, however, a mine of information to the secretary and to the lawyer who deals with the formation or operations of companies, and all such should have it on their shelves.

Books Received.

Hold your tongue! By Morris L. Ernst and Alexander Lindey. 1936. Crown 8vo. pp. xv and (with Index) 312. London: Methuen & Co., Ltd. 8s. 6d. net.

Tithe Rentcharge and Redemption Annuity Tables. By Percy William Millard, LL.D. (Lond.), F.S.S. 1936. Demy 8vo. pp. 31. London: Shaw & Sons, Ltd. 2s. 6d., post free.

Tax Cases. Vol. XX. Pt. I. 1936. London: H.M. Stationery Office. 1s. net.

Report of the Circuit Towns Committee. 1936. London: H.M. Stationery Office. 2d. net.

Synopsis of the Income Tax Codification Committee's Report. Compiled by Chas. H. Tolley, A.C.I.S., F.A.A., Accountant. 1936. London: Waterlow & Sons, Ltd. Price 2s. 6d.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Mr. Herbert Arthur Jones-Lloyd, solicitor, of Pembroke, and of Boncath, Pembs., left £24,344, with net personalty £11,533. He left: £50 to the Victoria Nurses' Home and Meyrick Hospital, Pembroke Dock.

Notes of Cases.

House of Lords.

Central London Railway Company *v.* **Commissioners of Inland Revenue; London Electric Railway Company** *v.* **Same; Metropolitan Railway Company** *v.* **Same.**

The Lord Chancellor, Lord Blanesburgh, Lord Russell of Killowen, Lord Macmillan, and Lord Roche.
21st May, 1936.

Revenue—Income Tax—Payment by Company of Interest on Debenture Stock—Tax Deducted—Interest Treated as Capital Expenditure—Company's Profits Sufficient to Pay Interest—Whether Company Entitled to Retain Tax Deducted—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), All Schedules Rules, rr. 19, 21.

Appeals from orders of the Court of Appeal, dated the 22nd June, 1934, allowing appeals by the present respondents, the Commissioners of Inland Revenue, from orders of Finlay, J., dated the 28th March, 1934.

In the first and second appeals, the appellant companies had issued debenture stock in order to obtain money for certain constructional work, and the question was whether the companies, who had deducted income tax from the debenture interest, were entitled to retain the tax deducted. They contended that they were entitled to do so on the ground that the debenture interest had been paid wholly out of profits or gains already brought into charge to tax. It was contended for the Crown that the interest had been paid out of capital and not out of income. In the third appeal, the question was whether certain interest having been paid without deduction of income tax by the appellants to the National Provincial Bank on money borrowed for the erection of a certain building, the appellants were entitled, under s. 36 (1) of the Income Tax Act, 1918, to repayment of tax on the amount of that interest. The appellants contended that the interest had been paid out of profits or gains already brought into charge to tax. The Crown contended that it was paid out of capital.

Lord Macmillan, giving the judgment of the House, said that substantially the same question was raised in the three appeals. He proposed to select as typical the case of the *Central London Railway Company*. In 1930, the company were empowered, by a private Act, to raise additional capital by means of an issue of 5 per cent. redeemable debenture stock. In the year ended the 31st December, 1930, the company paid £4,250 interest to the holders of that stock; £1,909 18s. 1d. of that sum was met out of interest on the unexpended proceeds of the issue. The balance of £2,340 1s. 11d. was charged to capital account by the company in pursuance of the power to do so conferred by s. 118 of the Act of 1930. In the statutory accounts compiled by the company, in compliance with the Railway Companies (Accounts and Returns) Act, 1911, for the year to the 31st December, 1930, the £2,340 1s. 11d. appeared as an item in Account No. 5, "Details of Capital Expenditure for Year ended December 31, 1930," where it was described as: "Interest on 5 per cent. redeemable debenture stock (1985/1995) during construction, less interest on unexpended proceeds." It was solely with the question of their right to retain the tax deducted from the £2,340 1s. 11d. which they debited to capital account that the present case was concerned. To answer that question their lordships had once more to consider rr. 19 and 21 of the General Rules applicable to All Schedules of the Income Tax Act, 1918. By r. 19, the right of the company to retain the tax deducted depended on whether the interest had been paid wholly out of profits. Rule 21 dealt with the converse case of profits "not payable or not wholly payable out of profits . . ." Accepting the position that, in the year in which the interest in question was paid, there were "profits or gains" of the railway company "brought into charge to tax," there remained the question whether the interest was "payable"

out of those " profits or gains." The word " payable " was used in r. 19 and in r. 21 (1); " paid " was used in s. 36 (1), which dealt with interest on bank advances; in r. 21 (1) the expression " payment is made " was used. It was true that the railway company could lawfully, if they chose, have paid the interest in question out of their profits, and it was also true that the interest was paid out of a general banking account which contained sufficient profits (though those profits were not their assessed profits—a difficulty which still haunted him). But the interest was actually paid out of capital, and capital was the real source of payment. There was a deliberate decision to charge the sum in question against capital and not against revenue. That being so, he did not see how the railway company could claim to retain the tax on that interest paid out of capital when the right to retain tax was conditional on the interest being payable out of profits. The theory of the notional taxed fund covering the amount of the interest paid did not fit such a case, for the transaction was outside the region of profits, whether notional or actual. In the tax year in question, they had chosen not to debit that sum to revenue account, and consequently had, *pro tanto*, prevented the diminution of the dividend fund in the distribution of which among their shareholders they had deducted tax. In the appeal of the Metropolitan Railway Co., the company were seeking to recover under s. 36 of the Act of 1918 income tax on certain sums of interest paid by them on money borrowed from their bank, which interest they debited to capital account. That was a distinction without a difference, and no independent argument was submitted on that company's behalf. All the appeals must be dismissed.

COUNSEL: *Latter*, K.C., *Monckton*, K.C., and *J. S. Scrimgeour*, for all the appellants; *The Attorney-General* (Sir Donald Somervell, K.C.) and *Hills*, for the Crown.

SOLICITORS: *Bircham & Co.*; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hain Steamship Company, Limited *v.* Tate & Lyle, Limited.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright, and Lord Maugham. 11th June, 1936.

SHIPPING—GENERAL AVERAGE—DEVIATION—LIABILITY OF HOLDER OF BILL OF LADING TO CONTRIBUTE ON DISCOVERY OF—LLOYD'S BOND ENTERED INTO BY HOLDER—IMMEDIATE RELEASE OF GOODS BY SHIPOWNERS AS CONSIDERATION—EFFECT OF ON LIABILITY TO CONTRIBUTE.

Appeal by Hain Steamship Company, Limited, from an order of the Court of Appeal (Scrutton and Slesser, L.JJ., Greer, L.J., dissenting), dated the 17th May, 1934, allowing an appeal by the plaintiffs, Tate & Lyle, Limited, from the judgment of Roche, J., dated the 13th December, 1933.

In March, 1930, the respondents, Tate & Lyle, Ltd., bought a quantity of sugar from a company called Farr & Co., of New York, and from a corporation closely associated with Farr and Co. In order to perform the contracts, Farr & Co., in July, 1930, chartered from the appellants the steamship " Tregenna " on terms whereby the vessel was to load a cargo of sugar, not less than 7,030 tons, at certain ports in Cuba and San Domingo. Freight was to be paid in New York as to 50 per cent. in cash on receipt of cable advice of signing of bills of lading, and the balance in cash on receipt of cable advice of right delivery of cargo and the net delivered weight ascertained. The ship proceeded to Santiago and there loaded cargo. Having received, by an error, no orders for a San Domingo port, the master indorsed the bills of lading for dead freight, as he had only 4,990 tons on board, and then cleared for Queenstown, whither he was to proceed for orders, proceeding between Cuba and San Domingo northward. The direct route to San Pedro would have been south of the island. The mistake having been discovered after a few hours, a cable was sent to the ship to proceed to San Pedro. The captain obeyed, taking the shortest route, which, from the point he had reached, took him round the north of San Domingo to San Pedro. There the " Tregenna " was loaded with a cargo of about 2,780 tons. While leaving San Pedro harbour, the ship stranded and received serious damage. The cargo was discharged and such as was not lost was trans-shipped by the appellants to another vessel, the " Baron Dalmeny," on bills of lading indicating the appellants as the shippers. It was in respect of that casualty that a general average contribution was claimed by the ship. The " Tregenna " bills of lading were indorsed and delivered to Tate & Lyle by the appellants. On the same day Tate & Lyle entered into a Lloyd's average bond. They made the necessary deposit, and received the goods. Later they discovered the alleged deviation and began this action against the appellants to recover so much of the deposit as covered the claim for general average contribution in respect of the sugar shipped at the Cuban ports, that was, before the deviation. The defendants counterclaimed for a declaration that the plaintiffs were liable in general average in respect of the whole cargo, and also claimed the balance of freight or a corresponding *quantum meruit* for freight in respect of the whole cargo. For the balance of freight on the Cuban shipment, whether on express contract or *quantum meruit*, the defendants denied liability. At the original trial (1933), 50 T.L.R. 139, Roche, J., held that there had not been a deviation, and gave judgment for the shipowners. In the Court of Appeal, 50 T.L.R. 415, all the lords justices were of opinion that there was a deviation. Scrutton and Slesser, L.JJ., held that the effect was to entitle the plaintiffs to succeed in the action on claim and counterclaim. Greer, L.J., found that the deviation had been waived by the charterers, and that that had the effect of leaving them liable to a general average contribution which, on the terms of the Lloyd's bond, could be claimed by the ship against the plaintiffs. They all agreed that there was no claim for freight.

LORD ATKIN said that, in respect of the Cuban sugar, the charterers appeared to have been at the time the owners of the goods; and he thought it clear that on principle the contribution fell due from the owners at the time of the sacrifice, though no doubt it might be passed on to subsequent assignees of the goods by appropriate contractual stipulations. The respondents' position had to be considered from two points of view: (1) as indorsees of the bills of lading in circumstances in which the rights and liabilities expressed in the bill of lading would devolve on them as though the contract contained therein had been made with them (under the Bills of Lading Act); (2) as parties to the Lloyd's bond. In respect to the first, in his opinion, the fact of deviation gave the bill of lading holder the right to refuse to be bound by the contract. Waiver by the charterer seemed, on principle, to have no bearing on the rights and liabilities which devolved on the bill of lading holder under the Bills of Lading Act. On the other hand, the terms of the Lloyd's bond appeared in the plainest words to give to the ship the right they claimed in respect of contribution. The consignees agreed to pay to the owners the proper proportion of general average charges " which may be chargeable upon their respective assignments." The obligation was independent of the bill of lading and there was good consideration in the ship's giving up a lien which it claimed, and giving to the consignees immediate and not delayed delivery. He thought, therefore, that the plaintiffs' claim to recover the deposit made in respect of the Cuban sugar failed, and that the ship's claim for a declaration that there was a valid claim for contribution against the deposit succeeded. On the ship's claim for the balance of freight in respect of the San Domingo sugar, he had come to the conclusion that it must fail. That there was no claim on the express contract—the bill of lading—he had already said. He was not prepared at present to adopt the view of Scrutton, L.J., that in no circumstances could a consignee, whether holder of a bill of lading or not, be liable to pay after a deviation any remuneration for the carriage from which he had benefited. He (Lord Atkin) preferred to leave the matter open, and in those circumstances

to say that the opinion of the Court of Appeal to the contrary in this case should not be taken as authoritative. In the present case he found that the balance of freight under the charter party and therefore under the bill of lading was to be paid in New York after advice of right delivery and ascertainment of weight, and the charterer remained still liable for that freight. The order of the Court of Appeal would accordingly be reversed. The other noble lords agreed.

COUNSEL: *Sir Robert Aske*, K.C., and *Cyril Miller*, for the appellants; *Stranger*, K.C., and *S. Furness*, for the respondents.

SOLICITORS: *Botterell & Roche; Middleton, Lewis and Clarke.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Judicial Committee of the Privy Council.

James *v.* Commonwealth of Australia and Others.

Lord Chancellor, Lord Russell of Killowen, Lord Wright, M.R., Sir George Lowndes, and Sir Sidney Rowlatt.
17th July, 1936.

AUSTRALIA—INTER-STATE TRADE—CONSTITUTIONAL FREEDOM OF—STATUTORY RESTRICTIONS ON TRADE IN DRIED FRUITS — VALIDITY — DRIED FRUITS ACT, 1928-35 — COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT, 1901 (63 and 64 Vict. c. 12), ss. 51 (i), 92.

Appeal from an order of the High Court of Australia, dated 11th June, 1935, allowing the demurrer of the respondent, the Commonwealth of Australia, to the statement of claim of the appellant, James, and from a consequential order of Starke, J., dated 28th June, 1935, ordering judgment to be entered in the action for the Commonwealth.

In the action in question, James claimed damages for the seizure by or on behalf of the Commonwealth of cases of dried fruits shipped by him from one State to another in Australia. He further claimed a declaration that the Dried Fruits Act, 1928-35, of the Parliament of the Commonwealth, contravened s. 92 of the Constitution embodied in the Commonwealth of Australia Constitution Act, 1901, and was invalid, and that the regulations made under the Dried Fruits Act, 1928-35, were likewise invalid. Section 3 of the Dried Fruits Act imposed restrictions on, and required a licence to be obtained for, sending dried fruits out of one State into another. By s. 92 of the Constitution, "On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free." James' consignments of dried fruits were seized because, contending that the Dried Fruits Act and the regulations made under it were invalid, he refused to apply for a licence or to undertake the prescribed conditions.

LORD WRIGHT, giving the judgment of the Board, said that the High Court, in allowing the demurrer, did so because they could not hold that the Commonwealth was bound by s. 92 without departing from an opinion of the High Court given in 1920 in *W. & A. McArthur Ltd.* v. *State of Queensland* (28 C.L.R. 530), that the Commonwealth was not bound by the section. The principal argument for the Commonwealth was that s. 92, if applied to the Commonwealth, would practically nullify the express powers granted to it in s. 51 (i). By s. 51 "the Parliament shall, subject to this Constitution, have power to make laws . . . with respect to (i) Trade and Commerce with other countries, and among the States." They (their lordships) could not shelter under the decision in *McArthur's Case*, *supra*, as the High Court felt they ought to do. The construction of s. 92 had recently been dealt with by this Board in *James* v. *Cowan* [1932] A.C. 542, but the actual decision in that case did not throw light directly on the question before their lordships in this appeal. The first question was the meaning of "free" in s. 92. If freedom was to be found in practice, the line must be drawn somewhere. The true criterion appeared to be that what was meant was freedom as at the frontier, which was the crucial point in inter-State trade. The idea started with the admitted fact that federation in Australia was intended, *inter alia*, to abolish the frontiers between the different States and create one Australia. That conception involved freedom from customs duties, imports, border prohibitions, and restrictions of every kind. But it had become clear from the various decisions already cited that such burdens and hindrances might take diverse forms, and indeed, appeared under various disguises. That construction also made s. 51 (i) consistent with s. 92, so far as concerned the Commonwealth, which, in their lordships' judgment, was bound by s. 92 equally with the States. The Constitution, when it was enacting a section which was only to apply either to the Commonwealth or to the States exclusively, indicated that intention in clear terms. As to the alleged contradiction between s. 92 and s. 51 (i), though trade and commerce meant the same thing in s. 92 as in s. 51 (i), they did not cover the same area, because s. 92 was limited to a narrower context by the word "free." For those reasons their lordships were of opinion that s. 92 bound the Commonwealth. It seemed to follow necessarily that the Dried Fruits Act, 1928-35, must be held to be invalid. On their interpretation of "free" in s. 92, that Act and the regulations either prohibited entirely, if there was no licence, or, if a licence was granted, partially prohibited inter-State trade. In their lordships' opinion, the Commonwealth should be held to have failed in their attempt by the method adopted under the Act in question to control prices and establish a marketing system. The appeal should be allowed, the demurrer should be overruled, and the matter remitted for trial to the High Court.

COUNSEL: *Wilfrid Barton* and *K. L. Ward*, for the appellant; *Robert Menzies*, K.C. (Attorney-General for Australia), *Gavin Simonds*, K.C., and *H. L. Parker*, for the Commonwealth of Australia; *H. E. Manning*, K.C., and *A. C. Nesbitt*, for the States of New South Wales and Queensland; *The Attorney-General for Australia* and *H. L. Parker*, for the State of Victoria; *Sir Stafford Cripps*, K.C., and *Paul Springman*, for the States of Tasmania and Western Australia.

SOLICITORS: *Justice & Pattenden; Coward, Chance & Co.; Light & Fulton; Freshfields, Leese & Munns; Galbraith and Best.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Horn *v.* Minister of Health.

Greer, Slesser and Scott, L.JJ. 24th July, 1936.

HOUSING — COMPULSORY PURCHASE ORDER — OBJECTION — ENQUIRY—DEPUTATION OF OFFICIALS OF LOCAL AUTHORITY —VISIT TO MINISTER—DISCUSSION OF HOUSING POLICY GENERALLY—OWNER OF LAND NOT PRESENT—SUBSEQUENT CONFIRMATION OF ORDER BY MINISTER—VALIDITY—DUTY OF MINISTER TO ACT JUDICIALLY—HOUSING ACT, 1925 (15 & 16 Geo. 5, c. 14), s. 64.

Appeal from a decision of Swift, J. (80 SOL. J. 615).

In August, 1935, the Sunderland Corporation made an order under s. 64 of the Housing Act, 1925, for the compulsory purchase of 102 acres of land belonging to the applicant, who gave notice of objection. A public local inquiry was held on the 5th December. On the 12th December, a deputation consisting of the mayor, town clerk and other corporation officials visited the Ministry of Health for the purpose of discussing their general policy under the Housing Acts. The applicant was not present, but according to an affidavit by the town clerk the order was not discussed at the meeting. In January, 1936, the Minister confirmed the order. The applicant contended that the discussion of any housing matter with representatives of the corporation while the order was *sub judice* was a breach of the Minister's duty as a quasi-judicial officer. Swift, J., quashed the order on the application of the owner of the land.

GREER, L.J., allowing the Minister's appeal, said that the interview was not concerned with the provision of houses under the Housing Act, 1930, but only under the 1935 Act, and for that purpose it was part of the duty of the Minister and of the council to consult together. If representations had been made to the Minister, behind the applicant's back, to persuade him to confirm the order, the court would have said that that was contrary to natural justice and to what was implied in the powers given to the Minister. But nothing of the kind happened. *Errington* v. *Minister of Health* [1935] 1 K.B. 249, *Offer* v. *Minister of Health* [1936] 1 K.B. 40, and *In re Manchester (Ringway Airport) Compulsory Purchase Order*, 153 L.T. 219, were different cases.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *V. Holmes*; *Montgomery*, K.C., and *M. A. Hill*.

SOLICITORS: *Solicitor to the Ministry of Health*; *Maples, Teesdale & Co.*, agents for *Steel, Maitland & Byers*, of Sunderland.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Thornber**; **Crabtree** *v.* **Thornber.**

Lord Wright, M.R., Romer and Greene, L.JJ.
27th July, 1936.

WILL—ANNUITIES—CHARGED ON CORPUS—SURPLUS INCOME OF RESIDUE TO BE ACCUMULATED—GIFT OF CAPITAL AND ACCUMULATIONS TO TESTATOR'S CHILDREN—NO ISSUE—WHETHER ACCUMULATIONS TO BE CONTINUED—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5, c. 23) s. 49.

Appeal from a decision of Bennett, J.

The testator, who died in 1933, by his will bequeathed his mother an annuity of £52, free of duty and income tax. He bequeathed his residuary estate to trustees, subject to debts, funeral and testamentary expenses, on the following trusts: "(*a*) to pay out of the annual income thereof the sum of £10 per week to my said wife during her life provided always that in the event of my residuary trust fund being insufficient to pay to my said wife the said sum of £10 per week my trustees shall have power to resort to the capital of my residuary trust fund to make up any such deficiency; (*b*) Subject thereto my trustees shall invest and accumulate the income of my residuary trust fund at compound interest by investing the same and the resulting income thereof as an accretion to the capital of my residuary trust fund during the life of my wife or for a period of twenty-one years from the date of my death (whichever period is the shorter) and at the expiration of such twenty-one years or at the death of my wife, whichever shall first happen (hereinafter called the date of distribution) upon trust as to both capital and income and the accumulation of such income" for his children. The testator never having had any children, Bennett, J., held that, subject to provision being made in due course of administration for the mother's annuity, the surplus income should not be accumulated, but should be dealt with as income from the residuary estate undisposed of by the will.

LORD WRIGHT, M.R., dismissing the mother's appeal, said that it had been argued that the trustees were still bound to accumulate the income of the residuary trust fund under the terms of the will, the argument being based on the words "subject to the provisions of the will" in the Administration of Estates Act, 1925, s. 49. It was argued that though there was no effective disposition with regard to that fund so far as it was to be accumulated in trust for the children, still there were certain provisions of the will which must be fulfilled, though there was an intestacy as to the residuary trust fund under s. 49. But there was no provision in the will to which the property which was not effectively disposed of was subject. It could not be said that there was an effective provision as to accumulating the income as an accretion to the capital when the purpose to which the accretion was directed had entirely failed and there was no effective disposition. The whole provision was governed by the purpose specified, and that having failed, there was no purpose within s. 49. The clause could not be regarded as a "provision contained in the will." His lordship referred to *In re Sullivan* [1930] 1 Ch. 84.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *Sir Gerald Hurst*, K.C., and *G. Upjohn*; *Cleveland-Stevens*, K.C., and *C. E. R. Abbott*; *R. W. Turnbull*.

SOLICITORS: *Williamson Hill & Co.*, agents for *Clarkson, Thomas & Collinson*, of Halifax; *Robbins, Olivey & Lake*, agents for *Longbothams & Bradley*, of Hebden Bridge.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Harrods (Buenos Aires) Ltd.**

Bennett, J. 6th July, 1936.

COMPANY—SCHEME OF ARRANGEMENT—REDUCTION OF CAPITAL—SUBSEQUENT INCREASE, SUB-DIVISION AND CONSOLIDATION—MINUTE FOR REGISTRATION—FORM—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 58.

Under a scheme of arrangement the company's capital was, on the reduction of capital becoming effective, increased to its former amount and its unissued ordinary shares of 15s. were sub-divided and consolidated into ordinary shares of 12s. each. On a petition for the court's sanction of the scheme it was suggested that the minute to be registered under the Companies Act, 1929, s. 58, should state the capital as it was to be constituted on the registration but omit the details of the increase, sub-division and consolidation which appeared by the scheme scheduled to the order made by the court.

BENNETT, J., having sanctioned the scheme, approved the following form of minute: "The capital of Harrods (Buenos Aires) Ltd. was by virtue of a special resolution of the company and with the sanction of an order of the High Court of Justice, dated the 6th day of July, 1936, reduced from the former capital of £5,458,000 divided into 2,350,000 preference shares of £1 each, 4,128,000 ordinary shares of 15s. each and 240,000 deferred shares of 1s. each to £4,855,712 4s. divided into 2,350,000 preference shares of £1 each, 4,015,252 ordinary shares of 12s. each, 112,748 ordinary shares of 15s. each and 240,000 deferred shares of 1s. each. At the date of the registration of this minute all the said preference shares, ordinary shares of 12s. each and deferred shares had been issued and were deemed to be fully paid up, and none of the said ordinary shares of 15s. each had been issued. By virtue of a scheme of arrangement sanctioned by the said order and of a special resolution of the company the capital of the company on the registration of this minute is £5,458,000 divided into 587,500 redeemable preference shares of £1 each, 2,350,000 preference shares of £1 each, 4,156,187 ordinary shares of 12s. each, 240,000 deferred shares of 1s. each and 73,939 shares of 4s. each, of which all the preference shares, 4,015,252 ordinary shares numbered ... to ... inclusive, and all the deferred shares are issued and deemed fully paid, and all the redeemable preference shares, 140,935 ordinary shares and all the shares of 4s. each are unissued."

COUNSEL: *H. W. Parry*, K.C., and *Tillard*.

SOLICITORS: *Slaughter & May*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Sharman's Contract.**

Farwell, J. 10th July, 1936.

VENDOR AND PURCHASER—CONVEYANCE IDENTIFICATION OF PROPERTY—WHETHER BY PLAN OR DESCRIPTION.

By a contract, dated March, 1936, the vendor agreed to sell and the purchaser agreed to purchase a freehold property "shortly described in the first schedule hereto." The schedule

described it as "all that messuage or dwelling-house situate and being Number 27, Norfolk Square, Brighton, in the County of Sussex." It stood in a row of houses, being a dwelling-house with a forecourt and a small yard at the rear. The draft conveyance prepared after investigation of title provided that the vendor conveyed "all that piece or parcel of land situate in the County Borough of Brighton and on the east side of Norfolk-square, together with the messuage or dwelling-house erected thereon, or on some part thereof and known as 27, Norfolk-square, Brighton aforesaid, as the same is for the purpose of identification only, and not by way of limitation or extension of grant, more particularly delineated and described in the plan drawn hereon and thereon coloured pink." This plan was a tracing from the Ordnance Survey. The vendor objected to its being annexed to the conveyance, on the ground that, unless he had it checked by his surveyor, he could not agree to it, and that, inasmuch as this would put him to unnecessary expense, he would agree to such a plan only if the purchaser was willing to pay the expense so incurred. He suggested by way of description: "All that piece or parcel of land situate and being in the County Borough of Brighton, bounded on the west by Norfolk-square, on the north by No. 28, Norfolk-square, on the east by No. 30, Norfolk-square, and on the south by No. 26, Norfolk-square, together with the messuage or dwelling-house erected thereon or on some part thereof and known as 27, Norfolk-square." He contended that this description identified the property beyond reasonable doubt. The purchaser took out a summons asking for a declaration that she was entitled to have the property identified by reference to a plan as proposed by the draft conveyance.

FARWELL, J., in giving judgment, referred to *In re Sansom and Narbeth's Contract* [1910] 1 Ch. 741, *In re Sparrow and James' Contract* [1910] 1 Ch. 60, and Williams on "Vendor and Purchaser," 4th ed., pp. 651–2. The description proposed by the vendor was sufficient, and a plan was not a necessary part of the identification of the property.

COUNSEL: *Raymond Jennings; C. Montgomery White.*

SOLICITORS: *Blyth, Dutton, Hartley & Blyth*, agents for *Graham-Hooper & Betteridge*, of Brighton; *Boxall & Boxall*, agents for *Edwin Boxall & Kempe*, of Brighton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Dodworth *v.* Dale.

Lawrence, J. 13th and 14th May, 1936.

REVENUE—INCOME TAX—PERSONAL ALLOWANCE—MARRIED MAN—WIFE LIVING WITH OR WHOLLY SUPPORTED BY—MARRIAGE DECLARED NULL FOR WIFE'S INCAPACITY—WHETHER VOID *ab initio* FOR ALL PURPOSES—ADDITIONAL ASSESSMENTS IN RESPECT OF DIFFERENCE IN ALLOWANCES GRANTED TO MARRIED AND SINGLE MEN—VALIDITY—FINANCE ACT, 1920 (10 & 11 Geo. 5, c. 18), s. 18.

Case stated by the Commissioners for the general purposes of the income tax.

The following facts were not in dispute: In October, 1921, the respondent, Dale, was married in London. For the years 1921 to 1932 inclusive he was granted the statutory personal allowances applicable to a married man during those years. In April, 1933, he obtained against his wife a decree of nullity of the marriage on the ground of her incapacity to consummate the marriage. The decree was made final in October, 1933. In October, 1934, the commissioners made additional assessments on the respondent under s. 125 of the Income Tax Act, 1918, of £90 for each of the five years ended the 5th April, 1933, which assessments represented the amount of personal allowance received for each of the years in excess of the allowance which would have been due to the respondent as a single man. The respondent having appealed to the general commissioners against the additional assessments, it was contended on his behalf *inter alia* (1) that, until the decree of nullity, he was liable for all the contractual obligations of the marriage, and that he in fact supported his wife; (2) that the marriage was not void *ab initio* but voidable. It was contended for the inspector of taxes *inter alia* that, during the years in question, the respondent was not married and therefore not entitled to the allowances applicable to a married man living with and supporting his wife. The commissioners held that, for the purposes of assessment to income tax, the marriage subsisted until October, 1933, and that the personal allowances had been rightly granted. They accordingly discharged the assessments. The inspector appealed.

LAWRENCE, J., said that the matter depended on the construction of s. 18 of the Finance Act, 1920, whereby a taxpayer was entitled in certain circumstances to claim a deduction if he proved that, for a given year of assessment, he had his wife living by him or she was wholly maintained by him. It had been contended for the Crown that the decree *nisi*, which by its terms rendered the marriage "null and void to all intents and purposes in the law whatsoever," made the respondent's *de facto* wife not his wife for the purpose of s. 18. The effect of the authorities was that a marriage which was null on the ground of incapacity of one of the spouses was voidable and not void; but, when the decree made it void, it was void *ab initio*, although not void for all purposes. The question was whether there was sufficient recognition attached to the *de facto* marriage to justify the court in adopting the interpretation of s. 18 that in that section "wife" included a *de facto* wife whose marriage was otherwise regular and could only be declared null on the ground of incapacity due to impotence. The question of how far the marriage was to be regarded as a marriage had been alluded to in several cases, and judges had indicated that transactions which had been concluded, and things which had been done, during the period of the supposed marriage could not be undone or re-opened after the marriage had been declared null and void: see *Anstey* v. *Manners* (1818), Gow. 10; *Dormer* v. *Ward* [1901] P. 20. There were no authorities throwing doubt on the proposition that what had been done during the continuance of the *de facto* marriage could not be overturned by operation of law. In his (his lordship's) opinion, therefore, s. 18 should be read as applying to a wife who was *de facto* a wife living with her husband and whose marriage had not yet been avoided. There was another difficulty in the appellant's way. It was not lawful for an additional or an original assessment to be made by reference to facts arising after the year of assessment (*Anderton & Halstead Ltd.* v. *Birrell* (1931) 16 T.C. 200). The appeal must be dismissed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *Victor Russell* and *Hills*, for the appellant; *Needham*, K.C., and *Stephen Benson*, for the respondent.

SOLICITORS: *Solicitor of Inland Revenue*; *Ralph Bond, Veitch & Bilney.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re London (Hammersmith) Housing Order: Application of Land Development Co. Ltd. and Another.

Swift, J. 8th July, 1936.

HOUSING—COMPULSORY PURCHASE ORDER—OBJECTION—PUBLIC LOCAL ENQUIRY—STATEMENT BY COUNSEL FOR OBJECTOR—INTENTION NOT TO CALL EVIDENCE IN SUPPORT OF—REFUSAL BY INSPECTOR TO HEAR STATEMENT—JURISDICTION—HOUSING ACT, 1925 (15 & 16 Geo. 5, c. 14), s. 64.

Application by the owners and lessees of the White City, Shepherd's Bush, to have a compulsory purchase order made by the London County Council on 24th June, 1935, in respect of fifty acres of land forming part of the site of the White City, quashed.

The order having been made under s. 64 of the Housing Act, 1925, an objection was lodged by the applicants. A

public local inquiry was held in November, 1935, and the order was subsequently confirmed by the Minister of Health. The applicants complained that at that inquiry counsel on their behalf had desired to address the inspector on the question whether it was in the national interest that a site so well suited for exhibitions should be taken for housing. Counsel having been asked whether he proposed to call evidence in support of that objection and having said that he did not, the inspector ruled that counsel could not be heard on that point. The applicants contended that that refusal to hear their objection vitiated the inquiry and the confirmation of the order by the Minister.

SWIFT, J., said that, at the inquiry, counsel for the applicants went at some length into the past history and present position of the site, and was going on to deal with what was going to be done in the future. He said that he was not going to call evidence to support his statement, because the directors of the two companies were unwilling to be cross-examined in public about their future plans. Counsel for the London County Council had objected, and the inspector had upheld the objection. He (his lordship) did not consider that the inspector, by so doing, had done anything so contrary to natural justice as to vitiate the whole inquiry. It was not necessary to lay down any general rule of law as to what the inspector might hear. Inspectors often heard statements not on oath, and there was no objection to their doing so in a proper case. Here, the inspector listened to counsel until told that facts were to be stated without evidence to support them. He then said that he could not listen to a statement of the opinions of persons who were present and unwilling to go into the witness-box. In an effort to meet the objections which the applicants had to disclosing their business in public, he offered to hear them in private after the public inquiry was finished, but that offer was not accepted. In making that offer the inspector had gone as far as anyone could be expected to go in order to smooth over the difficulty. This was a properly conducted public local inquiry, and the application must be dismissed.

COUNSEL: *Walter Monckton*, K.C., and *H. A. Hill*, for the applicants; *The Solicitor-General* (Sir Terence O'Connor, K.C.), and *Valentine Holmes*, for the Minister of Health.

SOLICITORS: *Tatham, Oblein & Nash; Solicitor to the Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Leemann *v.* Montagu.

Greaves-Lord, J. 10th July, 1936.

NUISANCE—POULTRY FARM—COMPLAINT OF CROWING OF COCKERELS—AREA PARTLY RESIDENTIAL PARTLY RURAL.

Action to restrain the defendant from carrying on the business of a poultry breeder in such a manner as to cause a nuisance to the plaintiff and unlawfully interfere with his occupation of his house.

The defendant's poultry farm adjoined the plaintiff's property at Egham. The plaintiff complained that reasonable enjoyment of the front rooms of his house was made impossible, especially at night, by the crowing of cockerels, from 400 to 800 of which he alleged that the defendant kept in an orchard adjoining his (the plaintiff's) property. The defendant denied that he was causing any nuisance. On an application for an interlocutory injunction, the judge in chambers ordered a speedy trial without pleadings.

GREAVES-LORD, J., said that it was an unfortunate case. The plaintiff and his wife, having had their rest disturbed, felt acutely about it. Equally, the defendant had a very keen interest in his farm, an interest quite naturally shown in the desire to produce good and effective stock. A rather exaggerated view had been taken of what this case meant. It did not mean the destruction of a large number of farms, nor was it of vital importance to poultry breeders up and down the country. It stood purely on its own facts. It appeared from the evidence that the districts which had been mentioned as containing similar farms were as far removed in character from this one as possible. That was to say, they were districts either purely agricultural or which had now been given up almost entirely to poultry keeping. But the district in question in this case was one which, while happily retaining some rural features, was by no means purely agricultural. The facts were that in this partly rural and very largely residential area the plaintiffs thought fit to buy an attractive house and garden, quite remote from any other uses than residential purposes. He (his lordship) was perfectly satisfied that, in the conditions which had existed, the normal life to which they were entitled free from interference was quite impossible. The plaintiff had real ground for complaint. The difficulty was to know how to deal with it without doing irreparable injury to the defendant's farm. No one wanted to do that, but the defendant must recognise that if he could not carry on without causing a nuisance there was no doubt about the law. He (his lordship) thought, on the whole, that the better course was to grant an injunction in the terms asked for, but he thought it well to say this: (1) He would not regard it as a breach of that injunction if the defendant were to use all the land by normal breeding pens, populated in the ordinary way. But in so far as cockerels had been congregated and allowed their freedom, he would regard it as a breach of the injunction if cockerels were kept in that way on a specified part of the land. (2) While he would suspend the injunction in its complete form for one month, the intervening period must be actively employed in reducing a proved nuisance. The activity shown in the period of suspense would be taken into account if the defendant should be brought before the court for any alleged breach of the injunction. It must be obeyed not only in the letter, but with a certain amount of determination. He hoped that the defendant would rid his mind for ever of the idea that this was a matter which he was challenging on behalf of thousands of poultry farmers. Poultry farming could be carried on just as well, and possibly even better, after this case. There must be judgment for the plaintiff for the injunction asked for.

COUNSEL: *Morris*, K.C., and *F. W. Beney*, for the plaintiff; *Archer*, K.C., and *P. B. Morle*, for the defendant.

SOLICITORS: *Croft & Russell; A. E. Hamlin, Brown & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Robertson and Another.

Lord Hewart, C.J., Humphreys and du Parcq, JJ.
22nd May, 1936.

CRIMINAL LAW—PRACTICE—INDICTMENT—OBTAINING FOOD BY FALSE PRETENCES ON DIVERS DATES EXTENDING OVER EIGHT MONTHS—SEVERAL OFFENCES CHARGED IN ONE COUNT.

Application for leave to appeal against conviction and sentence.

The applicants were convicted at Quarter Sessions of obtaining credit for board and lodging at a hotel by false pretences, and were sentenced to three years' penal servitude. The first count of the indictment alleged that the accused on divers dates between the 14th June, 1935, and the 27th February, 1936, with intent to defraud, obtained from a limited company owning a private hotel food to the value of £197 by false pretences which were duly specified.

LORD HEWART, C.J., said that no complaint had been made of the indictment in that court or in the court below, but that it was nevertheless not in the proper form. It was elementary that one count in an indictment should not charge more than one offence. In the present case, the first count charged scores, perhaps hundreds of offences. It charged the prisoners with obtaining food by false pretences over a period of eight months. It was said that that form of indictment

was becoming common. If that were so, the practice should be stopped. It was difficult to understand why the indictment should be framed in that way. The object was probably that the whole matter should be before the court. That object could, however, be achieved by charging the last offence only, and giving evidence of all the others. In the present case, if objection had been taken in the court below, the indictment would no doubt have been amended. No injustice had in fact been done. The application would be refused.

No counsel or solicitors appeared.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Legal Notes and News.

Honours and Appointments.

Mr. ARTHUR USHER, Assistant Solicitor at West Hartlepool, has been appointed to a similar position with Wednesbury Town Council. Mr. Usher was admitted a solicitor in 1934.

Mr. R. N. D. HAMILTON, LL.B., has been appointed Permanent Assistant Solicitor to the Buckinghamshire County Council.

Mr. R. G. SWAINSON, B.A. (Cantab.), has been appointed Temporary Assistant Solicitor in the Town Clerk's Department, Lancaster. Mr. Swainson, who is the son of Mr. J. G. Swainson, solicitor, of Lancaster, is a great-grandson of the late Mr. Thomas Swainson, who was Town Clerk of Lancaster from 1855 to 1892, and an Honorary Freeman of the Borough.

Mr. HARRY COOK, Assistant Solicitor to Reigate Corporation, has been appointed to the position of Assistant to the Town Clerk of Crewe. Mr. Cook was admitted a solicitor in 1933.

Mr. D. F. PEACOCK, solicitor, has been appointed Clerk to the Settle Rural District Council in succession to Mr. T. E. Pearson, who is to retire at the end of September. The appointment carries with it the post of Clerk to the Ewecross Assessment Committee. Mr. Peacock was admitted a solicitor in 1914.

Mr. T. E. BROWN, assistant solicitor to Chesterfield Corporation has been appointed assistant solicitor to Lincoln Corporation, in succession to Mr. H. S. R. Rogers, who has been appointed prosecuting solicitor for the City of Cardiff. Mr. Brown was admitted a solicitor in 1935.

Notes.

Mr. Alfred Dennis, of Weymouth, who will be ninety-seven years old next week, proposes to resume his duties as a magistrate. He resigned the chairmanship of the Weymouth Bench about four years ago.

The Minister of Labour has appointed Sir Felix Pole, Mr. H. E. Parkes, Sir L. A. P. Warner, and Mr. F. C. Fairholme to be members of the Industrial Court representing the Chancellor of the Exchequer when Civil Service claims are heard for a further period of one year from 1st July, 1936.

The Magistrate (Mr. Basil Watson, K.C.) at North London Police Court, last Wednesday, expressed his intention of stamping out speeding by motorists in his district. He said: "Speeds in built-up areas are a little less, though there is a number of summonses. Unless speeding stops I am going to stamp it out myself. I shall fine offenders £10 and £20 the first time, and if necessary £50 (maximum) on a second conviction. It is most dangerous to children, pedestrians, other cars, and dogs, and I am going to stamp it out."

Wills and Bequests.

Mr. William Telfer Leviansky, solicitor, of Hampstead, and of Basinghall-street, E.C., left £9,077 (net personalty nil).

Mr. George Gilbert Thompson, solicitor, of Bradford, partner in the firm of Mumfords & Gordons, solicitors, left £58,693, with net personalty £37,018.

Mr. George Henry Young, solicitor, of Croydon and formerly of Stepney, E., left £14,450, with net personalty £14,390.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 10th September, 1936.

	Div. Months.	Middle Price 26 Aug. 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	114¾	3 9 8	3 0 2
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after ..	JD	107	3 5 5	2 18 10
Funding 4% Loan 1960-90	MN	118½	3 7 6	2 18 4
Funding 3% Loan 1959-69	AO	103⅜	2 18 0	2 16 0
Funding 2½% Loan 1956-61 . ..	AO	93½	2 13 6	2 17 5
Victory 4% Loan Av. life 23 years ..	MS	115xd	3 9 7	3 1 8
Conversion 5% Loan 1944-64 ..	MN	119½	4 3 8	1 19 8
Conversion 4½% Loan 1940-44 ..	JJ	109⅝	4 2 1	2 8 8
Conversion 3½% Loan 1961 or after .	AO	107xd	3 5 5	3 1 11
Conversion 3% Loan 1948-53 ..	MS	104	2 17 8	2 12 4
Conversion 2½% Loan 1944-49 ..	AO	101¼xd	2 9 4	2 6 1
Local Loans 3% Stock 1912 or after ..	JAJO	97	3 1 10	—
Bank Stock	AO	380	3 3 2	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	88	3 2 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96½	3 2 2	—
India 4½% 1950-55	MN	116½	3 17 3	3 0 9
India 3½% 1931 or after	JAJO	99½	3 10 4	—
India 3% 1948 or after	JAJO	87¼	3 8 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 15 7
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	96	2 12 1	2 15 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 5 8
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	104	3 12 2	3 6 9
Canada 4% 1953-58	MS	111	3 12 1	3 3 0
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50 ..	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	101	2 19 5	2 17 4
Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 0
South Africa 3½% 1953-73	JD	108	3 4 10	2 18 0
*Victoria 3½% 1929-49	AO	102	3 8 8	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	98½	3 0 11	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106½	3 5 9	2 19 8
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95½	3 2 10	—
Manchester 3% 1941 or after ..	FA	96	3 2 6	—
*Metropolitan Consd. 2½% 1920-49 ..	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3 1 10	3 2 1
Do. do. 3% "B" 1934-2003 ..	MS	97½	3 1 6	3 1 9
Do. do. 3% "E" 1953-73 ..	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable ..	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	115	3 9 7	—
Gt. Western Rly. 4½% Debenture ..	JJ	125	3 12 0	—
Gt. Western Rly. 5% Debenture ..	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge ..	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131	3 16 4	—
Gt. Western Rly. 5% Preference ..	MA	120½	4 3 0	—
Southern Rly. 4% Debenture ..	JJ	113½	3 10 6	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 6 8
Southern Rly. 5% Guaranteed ..	MA	131½	3 16 1	—
Southern Rly. 5% Preference ..	MA	120½	4 3 0	—

*Not available to Trustees over par. †Not available to Trustees over 115
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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